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OVERCOMING THE COLONIALITY OF KNOWLEDGE IN INTERNATIONAL LAW: THE CASE OF ENVIRONMENTAL REFUGEES

SUPERANDO A COLONIALIDADE DO SABER NO DIREITO INTERNACIONAL: O EXEMPLO DOS REFUGIADOS AMBIENTAIS

Tatiana Cardoso Squeff¹

ABSTRACT

This research highlights the need to recognize one more category of refugees – environmental refugees. After all, climate change has increasingly encouraged the increasing displacement of individuals across national boundaries. Nevertheless, they do not fit into the traditional forms of refuge prescribed by international law. Thus, we argue that this view originates from a limitation in international law of who can effectively ‘prescribe the Law’ – that is, who may suggest/create legal rules in this sphere, which is an expression of the ‘coloniality of knowledge’ that still exists, and whose recognition may be a way of “freeing” the Global South.

RESUMO

Este texto destaca a necessidade de reconhecer-se mais uma categoria de refugiados – a dos refugiados ambientais. Isso, pois, as mudanças climáticas fomentam o deslocamento crescente de indivíduos para além das fronteiras nacionais. Contudo, essas pessoas não se encaixam nas tradicionais formas de refúgio prescritas pelo Direito Internacional. Assim, defende-se que isso decorre de uma limitação existente no Direito Internacional de quem pode efetivamente ‘dizer o direito’ – isto é, sugerir/criar as regras jurídicas nesse plano, sendo essa uma expressão da ‘colonialidade do saber’ ainda existente, sendo o seu reconhecimento uma forma de “libertação” do Sul Global.

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KEYWORDS

Climate change. Human mobility.
Refuge. Coloniality. Time of Law.

PALAVRAS-CHAVE

Mudanças climáticas. Mobilidade
humana. Refúgio. Colonialidade. Tempo
do direito.

1 INTRODUCTION

Contemporary reality is recognized as one full of risks and uncertainties, among which climate change stands out precisely for its arising consequences, permeating several areas, among which Law should be one. After all, precisely because it is 'behind of its time' (OST, 2001), the Law - whose role is to regulate the individual's conduct - should be modified to accompany the social development(s), timely rebuilding itself, rearticulating the past and the future because of its constant transformations.

It happens that the one who aims to make the Law "transcend" beyond the paralyzing state-centric view that usually originates from North America, which carries with it a roll of absolute truths that would be - in his belief - reproducible to all world regions. Such conduct that disregard local particularities and ends up maintaining the structures of domination, which still exist since colonialism, even though independence and decolonization have already formally occurred (QUIJANO, 1997).

This is the case with Refugee Law - a branch of international law that persists failing to formally recognize the existence of new categories of people who should be safeguarded by it, especially those moving across borders because of catastrophic situations that have their origin in climate change. This lack of recognition is supported by the understanding of certain countries of the Global North, which refuse to discuss this issue in international fora, fearing that a potential widening of the refugee concept may cause a high number of immigrants reaching their territories and claiming the same protection already designed for the "classic" refugees.

From this perspective, the present text has as its objective the need for recognizing environmental displaced persons as 'refugees', even if they do not strictly comply with the requirements of the 1951 Geneva Convention on the Refugee Status (UNHCR, 1951: art. 1). There is an obvious need for the (International) law to adapt to this current social reality, especially as regards to the granting of specific rights (which

actually support the individual in a situation of hypervulnerability) for those who are forced to leave their home countries due to the ecological-climate changes in its surroundings.

This demand would be especially necessary for certain countries in the global South, as (but not limited to) Tuvalu, Fiji, Solomon Islands, Marshall Islands, Maldives, Bangladesh, Kenya, Papua New Guinea, Somalia, Yemen, Ethiopia, Chad and Rwanda (VIDAL, 2009), which find themselves in the midst of devastating situations and that encounter barriers of notorious imperialist character to find a solution to their nationals. This is the reason why the objectives of this research are not limited to ascertaining the consequences of States and the resulting creation of “climate displaced persons”, but also to highlight the existing coloniality of knowledge in (International) Law and how the recognition of “environmental refugees” is an example of the (continuous) presence of imperialism in this area of knowledge, which constantly limits the voices that can build it.

2 CLIMATE CHANGE AND THE CONSEQUENT DISPLACEMENT OF PEOPLE

Climate change is a phenomenon that destabilizes the original structure of the atmosphere of the planet, causing a series of unprecedented consequences for humans, fauna and flora. In accordance to the United Nations Framework Convention on Climate (UN 1992: Art. 1§2), climate change can be defined as “a change that can be directly or indirectly attributed to human activity, which alters the composition of the world’s atmosphere and that is added to the one caused by natural climate variation observed over comparable periods”.

It originates in early modernity by promoting growth and socioeconomic integration through industrialization, being pointed as one of the negative forces acting against healthy environment, given the handling and consumption of natural resources without supervision or control (CLAPP and DAUVERGNE, 2005: 5-10). The most common examples of environmental problems directly arising from climate change are the rise in the average temperature of the planet, desertification, food shortages, thawing

and the consequent rise in sea levels, to cite some of the possible consequences (BECK, 1996: 16).

Desertification results from deforested soils, altered river courses, construction of dams and especially of burnings, which do not allow the soil to period of rest and then destined for livestock (CLAPP and DAUVERGNE, 2005: 95). Studies show that 10% of the world's fertile lands are already at this stage, whose consequence is in the rural exodus (SQUEFF, 2016: 15), which causes the migration of people to urban centers (intra/extra-border) so that they can - potentially - get better quality of life.

The food shortage for the world population that today exceeds the mark of seven billion inhabitants (WB 2000: 26-28; DIAMOND, 2005: 490-499) is another problem not only from the rural exodus itself, but also from climate change. These changes in the climate make food scarcer in certain regions by altering rainfall levels, causing intense temperature fluctuations (GORE, 2006: 112, 178 and 317), and intensifying natural disasters such as earthquakes, tsunamis and hurricanes, which limit the population's own access to certain types of food, generating numerous human health problems and largely motivating their emigration to a location that is (or at least seems to be) safer (WEYERMULLER, 2010: 3).

Defrost caused by rising temperatures on the planet greatly alters the polar region biodiversity, as well as influences the rest of the planet precipitation and CO₂ absorption ability, directly affecting agriculture and fisheries, just as the availability of fresh water, and contributing to greenhouse effect, given the greater release of methane into the atmosphere (DIXON-HOMER, 2008: 43-4). Another direct problem originating from the thawing is the rise in sea levels, which has been generating other problems of social order such as creating displacements Pacific Islanders, among other regions, because they are forced to emigrate by the “invasion” of the oceans (SANTOS, 2009: 67).

Thus, it is undeniable that climate change triggers the possibility of destruction of living conditions on the planet. However, it is important to note that climate change does not generate only *direct* “disturbances” in the economy, politics, environment, but also *indirect* ones, such as displacement of individuals as mentioned above. After all, some people can no longer stay in their home country because of destabilization generated by the ecological-climate changes in its surroundings, impeding them of continuing their usual lives (RODRIGUES and CARDOSO, 2012: 141).

This situation, as a result, has many reverberations, which needs to be managed fast and intensely to control climate-environmental damage and risks produced by the second modernity because of their harmful consequences, which generate unspeakable problems for the human person and his most intimate rights. After all, without receiving due legal protection, the individual displaced by the climate remains (even more) vulnerable than a “local” citizen because he lacking the conditions/means to deal with the problem, demonstrating greater fragility in his ability to reestablish and/or adapt (SANTOS, 2015: 79).

3 THE LIMITATIONS OF THE CONCEPT OF ENVIRONMENTAL/CLIMATIC DISPLACED PEOPLE

It is evident, therefore, that there are people who move due to the progressive and significant occurrence of climate change on the planet, which make their “permanence” in a particular location is no longer possible. So the displaced by the environment (or ‘environmentally displaced people’) are generically identified as individuals who are victims of environmental events that temporarily or permanently leave their countries of origin towards another city or nation, seeking the possibility of better living conditions (IOM, 2007).

However, notwithstanding this scenario points to a recurring problem in modernity, it does not have a legal framework that can support it so as to counter the growing migratory flow in the global sphere. This is because they are not considered “truly” refugees, even though this term is commonly used to identify them (ALVES, 2018; ONUBR, 2017; PLATONOU, 2017).

In order for a person to be declared as a refugee, he must have moved because of a founded fear of persecution based on race, religion, nationality, membership of a particular social group or political opinion, in accordance with the Geneva on the 1951 Refugee Concept. In addition, “typical” refugees are outside their country of origin because of these fears, preventing them from returning to it, although they may indeed one day do so, provided that, in such case, they lose their “special condition”.

The misconception, however, comes from the use of the term refugee in 1985 by an Egyptian named El-Hinnawi, when “referring to individuals who have fled their homes

for environmental change drastic enough to make their lives threatened or unsustainable regardless if internally or internationally displaced” (PACIFIC; GAUDENCIO, 2014: 136), gaining strength in the academic field and influencing the positions of various countries, such as Bangladesh, Kiribati and Tuvalu, given the possibility of their disappearance as a result of rising sea levels and consequent flooding (BERNET, 2015; VERNASSIERE, 2015).

Therefore, in accordance to this definition, climate change displaced people flee not because of fear or effective persecution by a state agent or other individual based on some kind of discrimination, but because of the climate situation that makes the place of origin and/or permanent domicile improper and unsustainable to maintain life, often temporarily barring their return – which, sometimes, is even impossible even in the long run due to the rising sea levels or high average of local temperatures (GOFFMAN, 2006), that is, in cases of increasing dismantling of local climate, which do not present any scientific model of potential reversal, but only one of aggravation, which indefinitely impedes people from returning.

Therefore, people who forcibly migrate (due to climate) to other States in search of a fresh start run into a series of bureaucracies and political, economic, social, cultural obstacles as they have no status (or protection) contemplated in international rules that generate obligations to States (MYERS, 2005). And by not receiving specific/minimum/basic protection under International Law, they are to be considered (“mere”) foreigners - literally 'the other', 'the different', which, for a considerable number of countries, have their rights drastically reduced because they are not nationals.

Although in many nations there is the corollary of equality between individuals, it is uncommon for 'ordinary migrants' (that is, with the exception of those who receive specific protection of International law, such as refugees, asylum seekers and stateless persons) to enjoy the same civil, political, social, economic and cultural rights as a national citizen, so that such people end up remaining on the margins of society (PEREIRA, 2011), and face a real situation of 'environmental/climate racism' (RODRIGUES and SQUEFF, 2016: 49). Examples of such reduced rights would be, under civil rights, freedom to leave, stay and come back, association and expression of religion; under political rights, voting and being voted on; under social rights, working conditions, access to health and education; under economic rights, unlimited market access; and under cultural rights, manifestation of culture - to name but a few.

Therefore, those individuals who forcibly move because of the weather, going through significant changes in their lives so they can have their rights safeguarded, end up having them doubly violated given the inflexibility term 'refugee' and the intolerance of those who do not comprehensively interpret the definition coined in the 1951 Geneva Convention and in the additional New York Protocol of 1967. Consequently, they are persons in continuous vulnerability who do not receive appropriate treatment under International Law, even though they need a regulatory framework to accommodate them.

Because of this, the question to ask is why not consider them as refugees? This definition presupposes the “urgent need to protect human life by ensuring the necessary prerequisites for safeguarding human value and human dignity, as well as its proper development” (RODRIGUES and CARDOSO, 2012: 143), regardless of the place of origin or the place where the person is domiciled, based on the principle of equality and in favor of the reduction of vulnerability (although States still need to be part of international documents relating to this theme).

Nevertheless, the adoption of this position seems to encounter strong resistance, notably by certain countries in the Global North, which refuse to debate this possibility in international fora, fearing a high influx of migrants to their borders claiming the same protection already intended for “classic” refugees under the terms of the 1951 Geneva Convention, and somehow softening their sovereignty and their understanding of these migrants as simple foreigners.

4. RECOGNITION OF ENVIRONMENTAL REFUGEES AS A WAY TO BATTLE THE ONGOING ‘COLONIALITY OF KNOWLEDGE’ IN INTERNATIONAL LAW

Part of the globe already defends the possibility of considering climate displaced people as refugees, parting from regional protection granted to these individuals in Africa (through the Convention of the Organization of African Unity Governing Specific Aspects of Refugees in Africa of 1969) and in the Americas (based on Cartagena Declaration of the Organization of American States of 1984), which underpin the protection - as refugees - of those who suffer from massive violations of human rights (SQUEFF, 2017: 87-104). Nevertheless, several countries - in particular those in the Global North - point out that such a designation is rather detrimental of the cause, and

end up affecting the refugees themselves (MCADAM, 2011: 114-116; THE ECONOMIST, 2018).

This group understands that the term "refugee" in such regional documents is pointed to people fleeing their countries because their life, their security or their freedom have been threatened by widespread violence, by the massive violation of human rights or by other circumstances which have seriously disrupted the public order of the nation, which usually occur in situations of internal conflict or in failed states, so that it would be rather impossible to classify environmental refugees directly as refugees without building on an already broad concept (RODRIGUES and CARDOSO, 2012: 143). Besides, it is understood from their position that the "mother" Convention of 1951 would not allow such a inference, being it "very punctual" (not to mention "questionable") to what was done in the regional context (although considered legal before their respective orders).

This opposition is easily seen as (one more) remnant of the imperialism carried out by the countries of the Global North in International Law. After all, although it would also help people from such States that are also in a situation of vulnerability caused by the consequences of climate change, enlarging the 'refugee' term means allowing and recognizing that other localities can also 'prescribe the law' by removing the countries of the Global North from center of legal recognition, as they have for centuries occupied.

And for the Global North, the prescription of the Law could not come from non-European (or non-North-Americans, since the mid-twentieth century), as they are considered "as inferior subjects, uneducated, illiterate, unreasonable, pagan, barbaric and primitive" (SÍVERES and SANTOS, 2013: 131).

In this sense, the only one that could actually produce an alternative for world problems would not be South Americans, the Africans or Asians - that is, those who suffer the most from climate change and that do not have the (available) means to deal with them (by themselves), and that eventually are responsible for a great emigration flow - since it would be up to them to reshape the existing Law.

This situation denotes the 'coloniality of knowledge' of this branch of Law, even though independence and decolonization have already formally taken place (QUIJANO, 1997). This is because, according to Fernanda Frizzo Bragato (2015: 58), "European colonial expansion not only brought about the global expansion of its economic and

political domain, but also of epistemological conceptions in all its aspects [...]. From this perspective, the modernity is the sign of European superiority”.

Thus the 'coloniality of knowledge' refers to the suppression and domination of cultures and knowledge of the non-Europeans, based on the existence of “a[n] [unique] way of producing knowledge” to be repeated worldwide, namely the European (QUIJANO, 1992: 446). In other words, Europeans would be the administrators of knowledge, ignoring any other possibilities when not from the same *locus*, as they would lack universality and validity.

This is the reality of international relations: even today “there seems to be a consensus on taken the determining philosophical and political substrates of [Europe] as fixed, [to the] construction of international rules”, without questioning or adapting it to the realities and/or desires of the Global South (SQUEFF and GOMES, 2017: 373). This situation ends up marginalizing the nations that make up this “bloc” in terms of building knowledge, regardless of whether these are the ones most affected by our contemporary reality, so that their ambitions eventually dissipate into space (LANDER, 1999: 53), in a perfect expression of what is the ‘geopolitics of knowledge’, well elucidated by Walter D. Mignolo (2008).

Therefore, the recognition of the environment displaced as refugees as it has been done in certain regions of the Global South (SQUEFF, 2017: 87-104) would serve not only to offer specific legal protection to those who are outside their country of origin and/or nationality in an attempt to reduce the vulnerability in which they find themselves, but also to function as a possibility of breaking the Eurocentric logic that still permeates International Law, highlighting the possibility of other locations to also react “actively and haughtily” to the consequences of contemporaneity, as are the effects of climate change, pointing to a specific legal framework to be extended to these individuals, which is inclusive and genuinely concerned on the human being, regardless of their origin, to the detriment of their consideration as a "mere" foreigner.

5 FINAL REMARKS

The present work aimed to highlight the need of recognizing more refugees, not only because of the consequences of climate change for effectively contributing to the increasing displacement of individuals across the world, but also because this is a form of “freeing” individuals recurrently oppressed by the perpetuation of the understanding that there would be a single *locus* of rearticulation/temporalization of law.

After all, the so-called 'environmental displaced people' pose a problem to be fought by international society as a whole - from North to South, imposing a new concept to be observed in order to ensure the full realization of human rights those who are forced to leave their homes in search of a safer life (RODRIGUES and CARDOSO, 2012: 154), without a direct interference from the welcoming state on how they should be treated. And the the way to respond to the problem of displaced people may be in the simple argument that everyone can ‘prescribe the Law’ regardless of the hemisphere in which they find themselves in.

Therefore, if climate change impacts are felt in various locations, both in the Global North or South – they all have the right to comment on the needs to address this issue, including the designing of a more inclusive (International) Law, which understands about the need of welcoming people who are experiencing difficulties arising from the ecological and climate change in its home surroundings, as would be the declaration of the existence of 'environmental refuges', empowering these individuals with the same protection that would be conferred to a “classic” or “regional” refugee, without whom they could be doomed to live in a situation of vulnerability, surrounded by weaknesses that often puts their human essence at risk.

Finally, we must remember the wise words of Hannah Arendt (1989: 234), which are aligned with what has been advocated throughout this text in the sense of recognizing those displaced by climate change as refugees, considering precisely that the deprivation of the rights of the individual “substantially affects the human condition, since the human being deprived of its qualities [...] is deprived of its substance, that is to say: become pure substance, loses its substantial quality, which is to be treated by others as similar”.

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